(33,725)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. 416

THE UNITED STATES OF AMERICA EX REL. NIELS PETER CLAUSSEN, PETITIONER,

vs.

HON. BENJAMIN M. DAY, COMMISSIONER OF IMMIGRATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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[fol. 1]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Writ of Habeas Corpus

The President of the United States of America, to Hon. Benjamin M. Day, Commissioner of Immigration, Ellis Island, Greeting:

We command you, that all and singular business and excuses being laid aside, you and each of you appear and attend before the Judge of the District Court of the United States of America for the Southern District of New York, at a Stated Term of said Court, to be held in the United States Court Room, No. 235, in the United States Court, Southern District of New York, on the 4 day of May, 1928, at 10:30 o'clock in the forenoon of that day and that you have the body of N. P. Claussen, mentioned in the petition, by you imprisoned and detained as it is said, together with the time and cause of such imprisonment and detention by whatsoever name the said person is called or charged, to do and receive what shall then and there be considered concerning said petitioner and have you there this writ.

Witness, Hon. John C. Knox, Judge of the District Court of the United States, for the Southern District of New York, at the City of New York, on the 1st day of May, in the year of our Lord one thousand nine hundred and twenty-eight.

Alex. Gilchrist, Jr., Clerk.

May 1st, 1928.

This writ is hereby allowed.

T. D. Thatcher, D. J.

Silas B. Axtell, Attorney for Petitioner, 11 Moore Street, New York City.

[fol. 2] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, ex rel. NIELS PETER CLAUSSEN,

against

HON. BENJAMIN M. DAY, Commissioner of Immigration

PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable Judges of the United States District Court for the Southern District of New York:

The petition of Niels Peter Claussen, respectfully shows:

That the petitioner is imprisoned and restrained of liberty at Ellis Island, illegally and without authority of law. Petitioner is held in custody by the respondent and his subordinate officials under the color and by virtue of certain so-called rules and regulations issued by the United States Secretary of Labor, to regulate the immigration of foreign immigrants and deportation of foreigners found unlawfully within the United States, and which are being enforced by respondent and the immigration officials serving under his authority and supervision, and which said rules and regulations have no proper application to the petitioner, and do not in their proper and lawful effect justify and warrant nor legally and lawfully justify and [fol. 3] warrant, petitioner's said imprisonment and restraint.

Petitioner has not been and is not committed or detained by virtue of any process or mandate issued by any court of the United States or by any judgment thereof, except as hereinafter set forth, nor is he committed by any final judgment or decree of a competent tribunal of civil or criminal jurisdiction of any cause, nor by virtue of any decision issued upon such judgment, decree or final order, except as hereinafter set forth.

Petitioner is illegally held under arrest, imprisoned and restrained of liberty, as aforesaid, pursuant to a warrant of deportation as an undesirable alien, illegally, erroneously and unjustifiably issued upon an illegal, erroneous and false finding, unjustified in fact and law, that petitioner

entered the United States at the Port of Boston, ex S. S. "Elisha Atkins," on the 25th day of March, 1918, and at the time of his arrest was, and is, in the United States in violation of the Immigration Act of February 5, 1917, in that petitioner was sentenced, subsequent to the passage of said Act, to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed withing five years after his entry into the United States. That the said finding is illegal, erroneous, false and unjustified, because the true facts are that petitioner did not enter into the United States on March 25, 1918, within the meaning of the immigration laws and of said Act of February 5, 1917, and was not convicted in this country of a crime involving moral turpitude committed within five years after his entry into the United States, within the meaning of said laws and said [fol. 4] Act; but last entered the United States, within the meaning of said laws and said statute, on or about January 22, 1912, more than five years prior to May, 1921, the adjudged date of commission of the crime of which petitioner was convicted and for which he was sentenced as aforesaid.

Petitioner was born in Denmark, is a seaman by occupation and has been for a long period of years, except during the period when he was imprisoned, as hereinafter set forth; and since 1912, at all times when petitioner has followed his calling as seaman and shipped upon vessels going into foreign waters, he has shipped and sailed exclusively on merchant vessels of the United States, and at all times when not sailing upon such vessels, has remained a resident within the landed territory of the United States.

Petitioner first entered the United States some time prior to 1907, arriving here as a member of the crew of the S. S. "Atlantic." Thereafter and during 1907 petitioner sailed from Boston to Buenos Ayres, where petitioner remained, shipping as a merchant seaman on Argentine merchant vessels, until the fall of 1911, when petitioner again returned to the United States and entered the United States, and entered the service of merchant vessels of the United States as a merchant seaman. Petitioner arrived and landed at Norfolk, Virginia, on or about January 22, 1912. The next day petitioner entered the service of the merchant marine of the United States, shipping as

American seaman on the American schooner, "George D. Cressy," for a round trip voyage from and back to American ports; and since that time has never left the actual landed territory of the United States except in the capacity [fol. 5] of American merchant seaman on board merchant vessels of the United States, whose shipping articles in each case petitioner signed for round-trip voyages calling for discharge of petitioner in an American port.

That the last voyage petitioner ever made into foreign waters was as a member of the crew of the United States merchant vessel "Elisha Atkins," an American schooner, flying the American flag, upon which vessel petitioner signed on as mate, October 19, 1917, at New York, U. S. A., for a continuous round-trip voyage to Para, South America, and back again, with discharge in an American port. The vessel went to Para and back by way of Cienfuegas, Cuba, and arrived at the Port of Boston, Mass., March 25, 1918, where petitioner received his discharge. During the voyage petitioner had at all times remained an American seaman and member of the crew of said merchant vessel of the United States, and was not discharged at any port foreign to the United States; and during the entire voyage was under the protection of the American flag, American laws regulating the American merchant marine, and American consular officials, as an American seaman in the service of an American merchant vessel.

As to this voyage petitioner alleges that the immigration authorities have wrongly and erroneously determined that petitioner quitted his American residence and left the United States, within the meaning of the immigration and merchant marine laws of the United States, and wrongly and erroneously have determined that when petitioner arrived back at the Port of Boston on board the S. S. "Elisha At- [fol. 6] kins," as aforesaid, he made a new "arrival" at and "entry" into the United States, within the meaning of such laws. Petitioner alleges that by reason of the fact that he shipped out of an American port upon an American merchant vessel for a continuous voyage from and back to the American port, with discharge in the American port without once being discharged in a foreign port, petitioner did not depart from the United States, within the meaning of such laws, but remained during the course of such voyage

an American resident within the meaning the immigration and naturalization laws of the United States, and remained at all times within the United States, within the meaning of such laws. And petitioner alleges that his last "arrival" at and "entry" into the United States, within the meaning of such laws was his "arrival" and "entry" in January, 1912, when petitioner arrived upon and was discharged from the S. S. "Avon" at Norfolk, Virginia, as aforesaid.

In 1918 petitioner became a delegate of the Seamen's Union, at the Port of New York, remaining in this capacity until 1920, when he became agent for the Seamen's Union in Portland, Maine. At New York, on June 6, 1919, petitioner took out first papers for citizenship. On or about May 1, 1921, while petitioner was agent for the Seamen's Union at Portland, Maine, as aforesaid, a strike by seamen on the Atlantic Coast was called. During the strike, and during a disturbance between seamen on board the merchant ship "Mary F. Barrett," a seaman named James Walker was killed on the aforementioned ship, on or about May 21, 1921. Seven men, including petitioner, were arrested and and charged with the murder of the seaman. [fol. 7] On advice of counsel, petitioner pleaded guilty to manslaughter, although he had had nothing to do with the fight in which the death occurred, did not see the fight, and had nothing to do with the killing. The only basis on which petitioner had become implicated was the mere fact that he was known to be an agent for the Seamen's Union, which had called the strike. On June 17, 1921, petitioner was sentenced, in the Cumberland County Court, Portland, Maine, for manslaughter, to a maximum term of six years and a minimum term of four years and six months imprisonment. Petitioner thereafter served his term of imprisonment in the Maine States Prison, Thomaston, Maine, and became eligible for parole, and was paroled, in December, 1925.

That during the period of petitioner's imprisonment as aforesaid, and on or about November 3, 1921, United States Immigrant Inspector Carr G. Horn, took petitioner into custody at the said Maine State Prison, and detained petitioner in said State Prison, and made an alleged examination into the status of petitioner and petitioner's right to

remain in the United States, and into the eligibility of petitioner to deportation under the immigration laws as a person unlawfully in the United States. At such examination and hearing minutes were taken, which will establish that the facts were shown substantially as hereinabove set forth. After such hearing and examination, the said immigrant inspector found and ruled, and, as petitioner alleges, erroneously and unjustifiably found and ruled, that the petitioner entered the United States at the Port of Boston, Mass., March 25, 1918, ex S. S. "Elisha Atkins," and that petitioner was unlawfully in the United States in that [fol. 8] petitioner had been sentenced, subsequent to the passage of the Immigration Act of February 5, 1917, to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after entry.

Petitioner alleges that this finding and ruling was and is erroneous and false and unjustified, in that petitioner last entered the United States on or about January 22, 1912, more than five years, to wit, more than nine years, before the adjudged killing of James Walker on May 21, 1921.

That petitioner was ordered deported on the basis of such findings and rulings, and upon petitioner being paroled in December, 1925, petitioner was taken into custody by the immigration authorities at New York for deportation. Thereafter, petitioner took an appeal to the Secretary of Labor, as provided by law, and on said appeal the determination of said immigration authorities, as hereinabove mentioned, was affirmed on or about December 30th, 1925.

That thereby there has been a final determination, and petitioner has no appeal from the determination of the Secretary of Labor, affirming the order of deportation of said immigration authorities. Petitioner has exhausted his legal remedies other than by writ of habeas corpus.

In addition and thereafter and on or about December 30, 1925, one Christian Rasmussen, a friend of petitioner, executed a petition for a writ of habeas corpus to obtain an examination by the courts into the legality of your present petitioner's imprisonment, alleging in said petition that petitioner was illegally imprisoned by virtue of a wrongful order of exclusion; and thereupon a writ of habeas corpus [fol. 9] was allowed by Hon. John C. Knox, U. S. D. J.,

on or about December 31, 1925. The writ was returnable on January 8, 1926, and was argued before Hon. Francis A. Winslow, who thereafter, and on or about January 27, 1926, rendered a decision dismissing the said writ and remanding your petitioner to the custody of the immigration authorities. Petitioner thereupon took an appeal to the United States Circuit Court of Appeals, which appeal was allowed by Hon. Henry W. Goddard, U. S. D. J., on February 9, 1926. Thereafter the said appeal was argued before the United States Circuit Court of Appeals, before Hough, Hand and Mack, Circuit Judges; and on or about December 13th, 1926, the said Court rendered a decision, by a divided court, voting two to one, affirming the said order of the District Court. A majority opinion was written by Hon. Julian W. Mack, U. S. Circuit Judge, and concurred in by Hon. Charles M. Hough, U. S. Circuit Judge; and a dissenting opinion was written by Hon. Learned Hand, U. S. Circuit Judge, who voted to reverse. On this decision a judgment was entered December 14, 1926, affirming the judgment of the District Court.

Thereafter and on March 7, 1927, a writ of certiorari was granted by the Supreme Court of the United States to review the case. At the time when the original petition for writ of habeas corpus was filed and the writ first allowed by the District Court, as aforesaid, the writ was directed to Hon. Henry H. Curran, the then Commissioner of Immigration. In January, 1928, after a suggestion for abatement was filed in the Supreme Court by the United States [fol. 10] Solicitor General, that Court, on January 9, 1928, rendered a per curiam decision, wherein it was pointed out that Henry H. Curran, sued as Commissioner of Immigration, resigned office on March 31, 1926, and was succeeded by Benjamin M. Day, who now holds that office; and that no motion was made to continue the cause against such successor in office, and that the six months period within which such a motion could be made had expired; and the Supreme Court accordingly vacated the judgments entered in the District Court and in the Circuit Court of Appeals and remanded the cause to the District Court with a direction to dismiss the cause as abated.

That pursuant to such direction, an order or judgment was entered in the United States District Court for the

Southern District of New York, on the 19th day of March, 1928, dismissing the cause as abated.

That by reason of the granting of a writ of certiorari by the Supreme Court, and that Court's vacating the judgments entered in the District Court and in the Circuit Court of Appeals, and by reason of the judgment or order entered in the District Court dismissing the cause as abated, and vacating the judgments theretofore rendered, there has never been any final adjudication by the courts as to the right of the petitioner to be released and set at liberty on writ of habeas corpus. In addition, it was through no fault of this petitioner that the issues as raised by the former writ of habeas corpus were not finally passed upon and determined by the Supreme Court, as it was through no neglect of this petitioner that the necessity of substituting as respondent the newly appointed Commissioner of Immigration in place of the resigned Commissioner was overlooked.

[fol. 11] That during the time that the issues presented by the former writ obtained by Mr. Rasmussen were pending in the United States Circuit Court of Appeals and the United States Supreme Court, petitioner was allowed liberty under bail of $1,000 as fixed by Hon. Francis A. Winslow. If the Court sees fit to permit petitioner liberty until this writ now applied for can be argued and finally determined, petitioner believes he can provide similar bail.

That attached hereto is a copy of the record of transcript of record as filed in the United States Supreme Court on application for writ of certiorari, which includes the record of the proceedings in the United States Circuit Court of Appeals, in the United States District Court, and a complete copy of the record of hearings before the Commissioner of Immigration and orders made thereon, as filed by the Commissioner of Immigration in said courts; together with a copy of the decision of the United States Supreme Court directing dismissal of the previous writ as abated, and a copy of the judgment or order of the District Court, entered thereon, dismissing the said cause as abated.

That the petitioner has not violated any of the provisions of Section 19 of the aforementioned Act, relating to deportation within certain times of aliens found in the United States in violation of law. Petitioner is not a member of

the classes excluded by law. Nor has he entered the United States in violation of any law. Petitioner has not advocated nor talked the unlawful destruction of property, or anarchy, or overthrow by force of the Government of the United States or the assassination of officials. Petitioner is not now nor about to become a public charge. [fol. 12] He has not been sentenced to imprisonment for a term of one year or more because of conviction in this country of crime involving moral turpitude committed within five years of the entry of the alien into the United States nor has he been sentenced more than once to a term of imprisonment for a crime involving moral turpitude. Petitioner has not managed or received any share or benefit from the earnings of a house of prostitution, or of any inmates, or been connected with such house, or place or resort frequented by prostitutes; or assisted any prostitute or protected or promised to protect any prostitute; nor imported or attempted to assist in importing any person for the purpose of prostitution or immoral purposes. Nor has the relator been convicted or admitted the commission of a felony prior to entry. Nor has he entered the United States except through the port of entry and inspected by immigration officials; nor has he been deported prior hereto, nor has he been pardoned.

That petitioner has resided continuously in the United States of America by reason of serving on board American vessels and an actual shore resident, for a period longer than nine years prior to the commission of the crime referred to herein and for longer than five years prior to the passage of the Act of February 15, 1917. Petitioner became exempt from seizure or deportation by reason of his having been an actual resident in the United States for a period of over five years prior to the commission of the crime for which he was convicted and sentenced.

Petitioner alleges that there was no evidence before the Department of Labor upon which to base its findings and [fol. 13] conclusions upon which the order of deportation was issued and, therefore, alleges that such evidence as was before the Department of Labor does not support said findings or said order. Petitioner alleges that the issues herein have not, therefore, been litigated by the Department of

Labor in proceedings which were regular, fair, and in compliance with the statutes applicable thereto, but an arbitrary determination has been made which is unfair to relator and contrary to the facts and the law.

Petitioner believes that he will be deported from the first available ship, perhaps immediately. Petitioner respectfully petitions that a writ of habeas corpus be issued herein immediately.

That there is no authority in law for the further detention of petitioner or which sustains the so-called rules or regulations under and by virtue of which petitioner is illegally held and deprived of liberty and refused the privileges enjoyed by such persons generally. No previous one who has declared his intention of becoming a citizen of the United States, and sworn to uphold the Constitution; and that as such petitioner is entitled to the liberty and privileges enjoyed by such persons generally. No previous application has been made for the relief herein prayed for, except as hereinabove set forth. Your petitioner has no other adequate remedy at law.

Wherefore, your petitioner prays that a writ of habeas corpus be issued herein; and that petitioner be ordered to be freed and set at liberty.

Niels Peter Claussen.

[fol. 14] *Duly sworn to by Niels Peter Claussen. Jurat omitted in printing.*

[fol. 15] FORMER WRIT OF HABEAS CORPUS

The President of the United States of America, to Hon. Henry C. Curran, Commissioner of Immigration, Ellis Island, Greeting:

We command you, that all and singular business and excuses being laid aside, you and each of you appear and attend before the Judge of the District Court of the United States of America, for the Southern District of New York, at a Stated Term of said Court, to be held in the United States Court Room, No. 235, in the U. S. Court, Southern District of New York, on the 8th day of January, 1926, at 10:30 o'clock in the forenoon of that day and that you

have the body of N. P. Clausen, mentioned in the petition, by you imprisoned and detained as it is said, together with the time and cause of such imprisonment and detention by whatsoever name the said person is called or charged, to do and receive what shall then and there be considered concerning said petitioner and have you then there this writ.

Witness, Hon. August N. Hand, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, on the 31st day of December, in the year of our Lord one thousand nine hundred and twenty-five.

Alex. Gilchrist, Jr., Clerk.

Silas B. Axtell, Attorney for Petitioner, 11 Moore Street, New York City.

Writ Allowed. Jno. C. Knox, U. S. D. J.

[fol. 16] In United States District Court, Southern District of New York

U. S. ex rel. N. P. Claussen,

against

Henry C. Curran, Commissioner of Immigration

Petition for Former Writ of Habeas Corpus

To the Judges of the United States District Court for the Southern District of New York:

The petition of N. P. Claussen, ex rel. Christian Rasmussen, respectfully shows:

That the relator is imprisoned and restrained of liberty at Ellis Island, illegally and without authority in law. That the relator is held in custody by the respondent and his subdordinate officials under the color and by virtue of certain so-called rules and regulations issued by the United States Secretary of Labor, to regulate the immigration of foreign immigrants, and which are being enforced by re-

spondent and the immigration officers serving under his authority and supervision.

That the said relator has not been and is not committed or detained by virtue of any process or mandate issued by any court of the United States or by any judgment therein, nor is he committed by any final judgment or decree of a competent tribunal of civil or criminal jurisdiction of any cause, nor by virtue of any decision issued upon such judg- [fol. 17] ment, decree or final order except as hereinafter set forth.

That he is held under arrest pursuant to an order of exclusion from the United States as an undesirable alien under 4289¼jj., Act of February 5th, 1917, Secs. 19 and 20.

That prior thereto and on or about the 17th day of December, 1924, the Commissioner of Immigration at the Port of New York, or the Commissioner of Immigration in Portland, Maine, or the Inspector of Immigration, or an official of the Department of Immigration, having jurisdiction over the prison located at Thomaston, Maine, made an alleged examination into the status of the relator and wrongly and erroneously determined that the relator was an undesirable alien and thereupon made an order excluding the relator and directed that he be deported. Thereafter your relator took an appeal to the Secretary of Labor, as provided by law and on said appeal the determination of the Commissioner or such other officer hereinbefore mentioned was affirmed on or about the 20th day of December, 1925.

That thereby there has been a final determination and your relator has no appeal from the determination of the Secretary of Labor affirming the order of exclusion of the Commissioner of Immigration. That your relator has exhausted his legal remedies other than by writ of habeas corpus.

That your relator was born in Denmark, is a seaman by occupation and has been for a number of years, except as hereinafter set forth, and that since 1912 he has sailed [fol. 18] exclusively on American ships. That your relator first entered the United States some time prior to 1907 as a member of the crew of the S. S. "Atlantic." That during 1907 your relator sailed from Boston to Buenos Aires, where he remained in the service of Argentine ships until the fall of 1911, when he returned to the United States on

an American vessel, the "Avon," landing in Newport News on or about the 20th of January, 1912.

That since his entry in 1912, your relator sailed on American ships exclusively and during the war sailed on the army transports. In 1918 your relator became a delegate of the Seamen's Union in the Port of New York, where he remained constantly in the service of said Union until 1920 when he became agent for the Seamen's Union in Portland, Maine. Your relator had taken out his first papers for citizenship and in May or June, 1921, had sixteen days to run before receiving his full papers when he was indicted and convicted of complicity in the murder of a seaman aboard the ship "Mary F. Barrett." At that time the relator was agent for the Union. On the 1st of May, 1921, a strike by seamen on the Atlantic Coast was instigated. A seaman was killed on the aforementioned ship, "Mary F. Barrett" on or about the 21st of May, 1921. The relator was one of seven convicted, and was sentenced from 4½ to 7 years in prison at Thomaston, Maine. That the relator's sentence was completed only recently and that he arrived at Ellis Island, Port of New York on Tuesday, December 29th, 1925.

[fol. 19] That petitioner has been informed by the Law Department of Ellis Island that the relator is to be deported immediately. That he has endeavored to see the relator but has been refused. That he has not seen the record of the said relator taken before the Commissioner of Immigration. That he has not means of obtaining this record. That your petitioner is a member of the Seamen's Union and has been an officer of the said Union for six years. That the petitioner is a citizen of the United States and is a friend of the relator. That the source of his information are records of the said Seamen's Union.

That the relator has not violated any of the provisions of Section 19 of the aforementioned Acts, relating to deporation within certain times of aliens entering or found in the United States in violation of law. That the petitioner is not a member of any of the classes excluded by law. Nor has he entered the United States in violation of any law. That he has not advocated or talked the unlawful destruction of property, or anarchy, or overthrow by force of the Government of the United States, or the assassination of

officials. That he is not now or about to become a public charge. That he has not been sentenced to imprisonment for a term of one year or more because of conviction in this country of crime involving moral turpitude committed within five years of the entry of the alien into the United States nor has he been sentenced more than once to a term of imprisonment for a crime involving moral turpitude. That the relator has not managed or received any share or benefit from the earnings of a house of prostitution, or of [fol. 20] any inmates, or been connected with such house, or place or resort frequented by prostitutes; or assisted any prostitute or protected or promised to protect any prostitute; nor imported or attempted to assist in importing any persons for the purpose of prostitution or immoral purposes. Nor has the relator been convicted or admitted the commission of a felony prior to entry. Nor has he entered the United States except through the port of entry and inspected by immigration officials; nor has he been deported prior thereto, nor has he been pardoned.

That your relator has resided continuously in the United States of America by reason of serving continuously during such time as a seaman on board American vessels and as an actual shore resident, for a period longer than nine years, prior to his seizure herein and for longer than five years prior to the passage of the Act of February 15th, 1917. That your relator became exempt from seizure or deportation by reason of his having been an actual resident in the United States for a period of over five years prior to the commission of the felony for which he was convicted and sentenced.

your relator alleges that there was no evidence before the Department of Labor upon which to base its findings and conclusions upon which the order of exclusion was issued and therefore alleges that such evidence as was before the Department of Labor does not support said findings or said order.

[fol. 21] Your relator, therefore, alleges that the issues herein have not been litigated by the Department of Labor or proceedings which were regular, fair, and in compliance with the statute applicable thereto, but an arbitrary determination has been made which is unfair to relator and contrary to the facts in the law.

Your petitioner does not attach hereto copy of the record of the hearing before the Commissioner of Immigration nor copy of the record before the Secretary of Labor. Nor the order of either the Commissioner or the Secretary of Labor for the reason that the petitioner has not been able to procure the same.

Your petitioner alleges that he has been informed that the relator will be deported upon the first available ship, perhaps tomorrow. Your petitioner respectfully petitions that a writ of habeas corpus be issued herein immediately.

That there is no authority in law for the further detention of your relator or which sustains the so-called rules or regulations or statutes under and by virtue of which relator is legally held and deprived of liberty and refused the privileges enjoyed by a resident of the United States, and one who has declared his intention of becoming a citizen of the United States, and that as such relator is entitled to the liberty and privileges enjoyed by such persons generally. That your relator has no other adequate remedy at law.

Wherefore, your petitioner prays that a writ of habeas corpus be issued herein.

Christian Rasmussen.

[fol. 22] *Duly sworn to by Christian Rasmussen. Jurat omitted in printing.*

[fol. 23] In United States District Court

[Title omitted]

Return to Former Writ of Habeas Corpus

Southern District of New York, ss:

Patrick Krisf, being duly sworn, says that he is, and during all the times herein mentioned has been, an immigrant inspector in the service of the United States; that he is attached to the Law Department of the Immigration Service of the United States at Ellis Island, New York; that he in his official capacity is authorized to make and in behalf of the respondent hereby makes the following return to the writ of habeas corpus herein.

In compliance with the direction of this Court, the body of the said alien in his own proper person produced herewith before this Court at the time specified in the writ.

It is respectfully urged that upon its face the petition upon which the writ was granted is insufficient in law, and that the writ should therefore be quashed because

[fol. 24] (a) The petition does not allege facts to show that the proceedings of the Department of Labor upon which was issued the warrant of deportation pursuant to which the said alien is held, were not regular, fair and in compliance with the statute applicable in such cases, nor facts from which this Court can determine that the proceedings were either irregular, unfair or not in compliance with said statute;

(b) The petition does not allege any facts which entitled this Court to review the findings and conclusions of the Department of Labor upon which the warrant of deportation was issued;

(c) It is not alleged that there was no evidence before the Department of Labor upon which it based or could have based its findings and conclusion in accordance with which the warrant of deportation was issued;

(d) It does not appear by allegation of facts that the issues sought by the petition now to be litigated in this Court have not already been determined by the Department of Labor adversely to the said alien in proceedings which were regular, fair and in compliance with the statute applicable thereto.

As appears by the records of the Department of Labor of the United States with respect to the above-named alien, copies of which are produced and filed herewith as part of this return:

(1) The record shows that this alien last entered the United States from a foreign country, Cuba, at Boston, on [fol. 25] March 25, 1918, as a member of the schooner "Elisha Atkin." The certificate of admission shows that at that time he was 42 years of age; a native and subject of Denmark; occupation, seaman. After his arrival, he continued working as a seaman, finding employment on American ships in coastwise trade.

(2) On June 17, 1921, he was sentenced by the Cumberland County Court of Portland, Maine, to serve a term of imprisonment of not less than four years, six months, and not more than six years, on a conviction of manslaughter, in connection with the killing of one James Walker on May 21, 1921. On the above facts the warrant of deportation was issued.

(3) There is no merit to the writ. The facts disclose that the alien, within five years of his entry into the United States from a foreign port, did commit a crime involving moral turpitude, for which he was sentenced to a term of imprisonment of more than one year, placing him within a deportable class, under Section 19 of the Immigration Act of February 5, 1917. Although the alien states he was not guilty of the actual commission of the crime for which he was imprisoned, he admits that the sentence was given on a plea of guilty. In this connection, it is interesting to note that on an application made to the Governor and Council of Maine, a pardon was denied.

(4) As appears from the record the alien was duly informed and apprised of the charges against him and was afforded a full, complete and fair hearing by the Department of Labor upon the said charges and a full, complete [fol. 26] and fair opportunity to answer and submit evidence upon them. There was evidence before the Department of Labor sufficient to sustain the said charges. The Department of Labor duly found that the charges were sustained, and they were in fact fully sustained by the proofs that were before and were considered by the Department of Labor. In any event, it certainly cannot be said on the record herein that the Department of Labor abused the discretion vested in it by Congress and in the absence of such abuse its determintaion was final and conclusive.

Wherefore, deponent prays that the writ of habeas corpus herein be dismissed and that the said alien be remanded to the custody of the Commissioner of Immigration at Ellis Island, New York, to be dealt with in accordance with the said warrant of deportation

Patrick Krisf, Immigrant Inspector.

Sworn to before me this 19th day of January, 1926.
Armand Chankalian, Notary Public, New York Co.
(Seal)

Clerk's No. 71, Reg. No. 7317.
Commission expires March 30, 1928.

[fol. 27] 2525/30. June 27, 1921.

Mr. S. H. Howes, Inspector in Charge, Portland, Me.

As directed by you I investigated the case of Niels Peter Clausen at State's Prison, Thomaston, Me., on the 26th instant, and the following data was secured concerning him:

Aged 45, single, seaman, subject of Denmark, Scandinavian race, born Fiskbek, Denmark, last entered the U. S. (from Cuba) at New York, March 29, 1918, ex Schooner "Elisha Atkin"; convicted of manslaughter Cumberland County, Me., June 17, 1921, and sentenced to from 4½ to 6 years at Thomaston.

John H. Jensen, Immigrant Inspector.

Application for Warrant of Arrest under Section 10 of the Act of February 5, 1917

(Letterhead of U. S. Department of Labor)

No. 17685/6

Boston, Mass., August 31, 1921.

The undersigned respectfully recommends that the Secretary of Labor issue his warrant for the arrest of Niels P. Clausen, age 45, Scandinavian, who arrived as a member of the crew of Sch. "Elisha Atkins" at this port March 25, 1918, the alien named in the attached certificate, upon the following facts which the undersigned has carefully inves- [fol. 28] tigated, and which, to the best of his knowledge and belief, are true:

(1) (Here state fully facts which show alien to be unlawfully in the United States. Give sources of information, and, where possible, secure from informants and forward with this application duly verified affidavits setting forth the facts within the knowledge of the informants.)

From the enclosed report by Inspector Jensen, it appears that the above named alien has been sentenced to imprison-

ment for a term of one year or more because of conviction in this country of a crime involving moral turpitude.

9/12/21

Issue W/A
Committee
OURY

(2) The present location and occupation of above-named alien are as follows: State Prison, Thomaston, Me.

Pursuant to Rule 22 of the Immigration Regulations there is attached hereto and made a part hereof the certificate prescribed in subdivision 2 of said Rule, as to the landing or entry of said alien, duly signed by the immigration officer in charge at the port through which said alien entered the United States.

H. J. Skeffington, Commissioner.

JAD
Inc
Rubber stamps (3)—one illegible:

[fol. 29] Certificate of Admission of Alien

U. S. Department of Labor, Immigration Service

Boston, Mass., Aug. 31, 1921.

I hereby certify that the following is a correct record and statement of facts relative to the admission to the United States of the alien named below:

(1) S. S., Sch. "Elisha Atkins"; Line, —
(2) Date arrival, Mar. 25, 1918; Manifest No., 140 Crew List; No. 1 Class, —;
(3) Port at which arrived, Boston, Mass.;
(4) Name, Nieles P. Clausen; age, 42; sex, M.;
(5) Married, S.; occupation, Seaman; able to read and write, Yes;
(6) Native of Denmark; race, Scandinavian;
(7) Last permanent residence, —;
(8) Destination, —;
(9) By whom passage paid, —; money brought, $—;
(10) Whether in U. S. before, —; when, —; where, —;
(11) To whom going, —; condition of health, —;

(12) Height, 5' 8; complexion, —; color of hair, —;
[fol. 30] (13) Color of eyes, —; identification marks, —;
(14) Place of birth, —; examined by Inspector —;
(15) How admitted, —; accompanied by, —;
(16) Remarks: Arrived here as mate of vessel; signed on Oct. 19, 1917, at New York.

(Signature) H. J. Skeffington (Official title) Commissioner.

(This form is insufficient as a basis for a Petition for Naturalization.)

Warrant—Arrest of Alien

United States of America, Department of Labor, Washington

No. 55131/84

To Commissioner of Immigration, Boston, Mass., or to any Immigrant Inspector in the service of the United States:

Whereas, from evidence submitted to me, it appears that the alien Niels P. Clausen, who landed at the port of Boston, Mass., ex SS "Elisha Atkins," on the 25th day of March, 1918, has been found in the United States in violation of the immigration act of February 5, 1917, for the following among other reasons:

[fol. 31] That he has been sentenced, subsequent to the passage of said Act, to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after his entry into the United States.

I, E. J. Henning, Assistant Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law.

The expenses of detention hereunder, if necessary, are authorized, payable from the appropriation "Expenses of Regulating Immigration, 1922." Pending further proceedings the alien may be released from custody upon furnishing satisfactory bond in the sum of $1,000.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 14th day of September, 1921.

E. J. Henning, Assistant Secretary of Labor. (Seal)

JF.

Rubber stamp (on back):

Received Sep. 19, 1921, Immigration Service, Portland, Maine.

[fol. 32] (Letterhead of U. S. Department of Labor)

File No. 2525/30

Report of Hearing in the Case of Niels P. Clausen, or Niels Peter Clausen

Under Department warrant No. 55131-84, dated Sept. 14, 1921.

Hearing conducted by Inspector Carr G. Horn, at Maine State Prison, Thomaston, Me. Date, Nov. 3, 1921.

Alien taken into custody at Maine State Prison, Thomaston, Me., 6:00 P. M., Nov. 3, 1921, by Inspector Carr G. Horn, and detained in State Prison.

Minutes taken and transcribed by Inspector Carr G. Horn.

Said Niels P. Clausen, or Niels Peter Clausen, being able to speak and understand the English language satisfactorily, no interpreter was employed.

Said Niels P. Clausen, or Niels Peter Clausen, was informed that the purpose of said hearing was to afford him an opportunity to show cause why he should not be deported to the country whence he came, said warrant of arrest being read and each and every allegation therein contained carefully explained to him. Said alien was offered an opportunity to inspect the warrant of arrest and the evidence upon which it was issued, which privilege was ac-
[fol. 33] cepted. The alien being first duly sworn, the following evidence was presented:

Q. What is your name?

A. Niels Peter Clausen.

Q. You are advised that you have the right to be represented by counsel at this hearing; do you wish to be so represented?

A. No.

Q. Do you then waive all rights of counsel and are you willing to proceed now with the hearing?

A. Yes.

Q. How old are you?

A. 46; I was born Aug. 28, 1875, at Fiskbek, Denmark.

Q. What was your father's name?

A. Jorgen Clausen.

Q. And your mother's?

A. Johanna Katrina Clausen.

Q. Where was your father born?

A. In Denmark.

Q. Did he ever live in the U. S.?

A. No.

Q. Are your father and mother living?

A. Yes, at Hjarbek, Denmark.

Q. Are you married?

A. No.

Q. When, where and by what means did you arrive in the United States?

A. I first came many years ago. I came on a full-rigged British ship, the Avon, and landed at Norfolk, Va., about Jan. 22, 1912. The next day I shipped in a five-masted American schooner, the "George D. Cressey," and have sailed under the American flag ever since. During the war I was in the S. S. "City of Memphis" in transatlantic service; I was boatswain. She was sunk by a submarine 45 miles off Fastnet, England, while I was in her. At that time I was chief mate. My last ship was the schooner [fol. 34] "Elisha Atkins." We went to Para, South America, and back to the U. S. by way of Cienfuegos, Cuba.

Q. The record at hand shows that you arrived in the U. S. at the port of Boston, Mass., March 25, 1918, on the "Elisha Atkins"; is that correct?

A. Yes; that was my last foreign trip; I have been in American ships coastwise since then.

Q. Have you any relatives in the U. S.?

A. Yes, a brother, Marinus Clausen, at 67-69 Front Street, New York.

Q. Are you a subject of Denmark?

A. Yes.

Q. Have you ever applied for citizen's papers in this country?

A. Yes, I got my first papers in New York, June 6, 1919; I have not got my final papers.

Q. When and on what charge were you sentenced to prison?

A. June 17, 1921, for manslaughter.

Q. How did you plead?

A. I pleaded guilty by advice of counsel, but as a matter of fact I didn't see the fight at all. There were seven of us arrested. Our lawyer thought we would get off easier if we pleaded guilty.

(Note: The records of the Cumberland County Court, Portland, Me., show that the alien, with others, including the aliens Peter Derks and Nils Rudnquist, was sentenced on June 17, 1921, for manslaughter, for the killing of James Walker on May 21, 1921, in Portland.)

[fol. 35] Q. Were you ever in prison before?

A. No.

Q. Have you anything further to say as to why you should not be deported?

A. Yes, if I thought I was a menace to the U. S. I never would want to stay here, but I can get all kinds of references to my good character, I like this country and I have the American viewpoint.

The Prison record shows that Niels P. Clausen, No. 5047, was sentenced June 17, 1921, for manslaughter, to a maximum term of 6 years and a minimum term of 4 years 6 months; and that he will be eligible for parole in December, 1925. The Warden has been requested to notify this office in advance of the date of the alien's release.

From the foregoing evidence, I, the duly authorized examining officer, do find as follows: That the said Niels P. Clausen, or Niels Peter Clausen, is an alien, namely, a subject of Denmark; that he entered the United States at the port of Boston, Mass., March 25, 1918, ex S. S. "Elisha

Atkins"; and that he is unlawfully in the United States in that he has been sentenced, subsequent to the passage of the Immigration Act of Feb. 5, 1917, to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after entry.

I would therefore respectfully recommend that he be deported upon the expiration of his sentence.

Carr G. Horn, Immigrant Inspector.

[fol. 36] (Letterhead of U. S. Department of Labor)

Stamp—Received Bureau of Immigration Nov. 12, 1921, Mails & Files.

Refer to No. 2525/30.
Bureau No. 55131/84.

Office of Inspector in Charge, Port of Portland, Maine

Nov. 7, 1921.

Commissioner General of Immigration,
Washington, D. C.:

In re Niels P. Clausen, or Niels Peter Clausen

Niels P. Clausen, or Niels Peter Clausen, single, 46, seaman, Scandinavian race, native and subject of Denmark, entered the U. S. at the port of Boston, Mass., March 25, 1918, ex Sch. "Elisha Atkins." The warrant of arrest charges that he has been sentenced, subsequent to the passage of the Immigration Act of Feb. 5, 1917, to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after entry. Hearing held at Maine State Prison, Nov. 3, 1921.

Rights of counsel were waived by the alien.

Warrant was duly read to alien. No additional charges.

The evidence shows that the alien was born in Denmark, and has his "first papers"; that he arrived as above noted, from South American and Cuban ports, this being his last foreign trip. It appears that he first arrived in the U. S. [fol. 37] some 9 years ago, and since that time has sailed

continuously under the American flag, up to the time of his conviction. He was sentenced in the Cumberland County Court, Portland, Me., on June 17, 1921, to serve a term of not less than 4 years 6 months and not more than 6 years for manslaughter in connection with the killing of James Walker on May 21, 1921.

Alien is detained in State Prison for expiration of sentence. Alien claims to have destroyed his Passport and other papers of identification.

The findings of the examining officer are concurred in and deportation is respectfully recommended, upon expiration of sentence.

S. H. Howes, Inspector in Charge.

No. 55131/84. November 16, 1921.

Niels P. Clausen, or Niels Peter Clausen

Memorandum:

The Bureau submits this case upon letter of transmittal hereunder, and concurs in the recommendation of the Inspector in Charge, Portland, Maine, that the alien be ordered deported to Denmark at Government expense, on the charge contained in the warrant of arrest.

[fol. 38] Execution of the warrant to be deferred until such time as the alien is released from prison.

For the Commissioner-General, (Name illegible) Special Assistant.

JF.

So Ordered:

Theodore G. Risley, Acting Secretary.

Rubber stamps (2).

(Letterhead of U. S. Department of Labor)

In answering refer to No. 55131/84.

November 19, 1921.

Inspector in Charge, Immigration Service, Portland, Me.

Sir: The Bureau acknowledges the receipt of your letter of Nov. 7th, No. 55131/84, transmitting record of hearing

accorded the alien Niels Peter Clausen, or Niels P. Clansen, who landed at the post of Boston, Mass., ex S. S. "Elisha Atkins," on March 25, 1918.

[fol. 39] After a careful examination of the evidence submitted in this case, the Department is of opinion that the alien is in the United States in violation of law. You are therefore directed to cause him to be taken into custody and conveyed to New York, N. Y., for deportation, the expenses incident to such conveyance, including the employment of an attendant to assist in delivery, if necessary, at a nominal compensation of $1.00 and expenses both ways, being authorized, payable from the appropriation "Expenses of Regulating Immigration, 1922."

The alien should be conveyed to New York for deportation as soon as the necessary arrangements have been made by the Ellis Island office, with which you should communicate.

Respectfully,

(Stamp Illegible) For the Commissioner General. Special Assistant.

Approved:

(Signed E. J. Henning) Nov. 19, 1921, Mail and Files, Assistant Secretary.

Inclose W. D. No. 7429.

RN.
Rubber stamps (1).

[fol. 40] Warrant—Deportation of Alien

United States of America, Department of Labor, Washington

No. 55131/84.

To Commissioner of Immigration, Ellis Island, N. Y. H., or to any Officer or Employee of the U. S. Immigration Service:

Whereas, from proofs submitted to me, after due hearing before Immigrant Inspector Carr C. Horn, held at Thomaston, Me., I have become satisfied that the alien Niels Peter Clausen, or Niels P. Clausen, who landed at the port of

Boston, Mass., ex S. S. "Elisha Atkins," on the 25th day of March, 1918, has been found in the United States in violation of the immigration act of February 5, 1917, to wit:

That he has been sentenced, subsequent to the passage of said Act, to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after his entry into the United States, and may be deported in accordance therewith:

I, E. J. Henning, Assistant Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said alien to Denmark, the country whence he came, at the expense of the appropriation "Expenses of Regulating Immigration, 1922." You are directed to purchase transporta-[fol. 41] tion for the alien from New York, N. Y., to his home in Denmark at the lowest available rate, payable from the above-named appropriation.

Execution of this warrant should be deferred until the alien has been released from prison.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 19th day of November, 1921.

(Signed) E. J. Henning, Nov. 19, 1921, Mail and Files, Assistant Secretary of Labor.

RN

(Letterhead of U. S. Department of Labor.)

No. 55131/84

June 28, 1924.

District Director of Immigration,
Portland, Maine:

It is requested that you submit a report of the present status of the case of Niels Peter Clausen, your file No. 2525/30.

Acting Commissioner General.

BS.

Rubber stamp:

(Signed) W. W. Sibray Jun 28 1925 Mail & Files

[fol. 42] 55131/84

November 19, 1921.

Official copies furnished the Commissioner of Immigration, Ellis Island, N. Y. H., for his information. Upon his release from prison, the alien will be conveyed to your port by an officer detailed by the Inspector in Charge at Portland, Me. On June 17, 1921, he was sentenced to serve a term of from 4 to 6 years.

Foreign address: Father, Jorgen Clausen lives in Fiskbek, Denmark.

For the Commissioner General.
Special Assistant.

RN

Rubber stamp (illegible).

(Letterhead of U. S. Department of Labor.)

No. 2525/30

Office of Immigrant Inspector

June 30, 1924.

Commissioner General of Immigration,
Washington, D. C.:

In reply to your letter of June 28th, No. 55131/84, as to the present status of the case of Niels Peter Clausen, you [fol. 43] are advised that this alien is serving a six years sentence in the Maine State Prison, Thomaston, Maine, and he will be eligible for parole in December, 1925.

Recently attorneys in Portland made application to the Governor and Counsel for a pardon for this alien, informing the Governor that the alien would be deported immediately upon his release from prison, but the pardon was denied.

S. H. Howes, District Director of Immigration.
SHH RAH.

Rubber stamps (2).

(Letterhead of U. S. Department of Labor.)

No. 2525/30.

Office of Immigrant Inspector, Portland, Me.

January 30, 1925.

Commissioner General of Immigration,

Washington, D. C.:

In reference to the case of the alien Niels Peter Clausen, your file 55131/84, you are advised that in view of the fact that the alien will be eligible for parole December, 1925, he is making application for permission to ship one way for-[fol. 44] eign in lieu of deportation, and now presents his Certificate of Nationality in lieu of Passport.

As there is no Danish Consul at this port I would respectfully request that you endeavor to have the same extended in order that he may use it in December this year.

I would also respectfully request to be informed if the Department desires to authorize the alien to reship one way foreign in lieu of deportation.

Certificate of nationality enclosed.

S. H. Howes, District Director.

SHH RAH

Two rubber stamps:

Incl. 20332.

55131/84—Portland, Maine

February 10, 1925.

In re: Niels Peter Clausen, aged 46.

The case comes before the Board of Review in warrant proceedings.

No interested parties.

This record relates to a native of Denmark, of Scandinavian race, aged 46, male, single, seaman, who entered at Boston on March 25, 1918, as a seaman and has remained in this country. In November, 1921, he was ordered deported to Denmark at government expense, on the grounds

that he has been sentenced for a year or more for a crime involving moral turpitude; the offense for which he was sentenced being manslaughter.

[fol. 45] The case comes for attention at this time by means of a request made by the alien for permission to ship foreign in lieu of deportation. He will be eligible for parole the latter part of this year. Since the alien is a seaman and will presumably follow the sea hereafter, in any event it is believed that he may properly be permitted to ship foreign in lieu of deportation.

It is recommended that the alien be permitted to ship foreign in lieu of deportation, if practicable.

(Signature illegible), Chairman, Secy. & Comr. Genl's Board of Review.

GWS/CMB

So ordered: Robe Carl White, Second Assistant Secretary.

Rubber stamp: Received Feb 10 1925 Law Division

55131/84

October 29, 1925.

Commissioner of Immigration,
Ellis Island, New York Harbour,
New York, N. Y.:

The Bureau is forwarding to you herewith Certificate of Nationality of the alien Niels Peter Clausen who is serving a sentence in the Maine State Prison, Thomaston, Maine, and whose sentence will expire early in December, 1925.

It is requested that you present this certificate to the Danish Consul in New York City for extension, advising [fol. 46] the Bureau and the Portland, Maine, office after extension has been made.

Harry E. Hull, Commissioner General.

PLC
Encl. 1568

Official copy furnished the District Director of Immigration, Portland, Maine, reference to his file No. 2525/30.

Harry E. Hull, Commissioner General.

Rubber stamps (2):

(Signed) Harry E. Hull Oct 29 1925 Mails & Files
(Signed) Harry E. Hull Oct 29 1925 Mails & Files

(Letterhead of U. S. Department of Labor.)

No. 2525/30

Office of District Director of Immigration, Portland, Me.

October 26, 1925.

Commissioner General of Immigration,
Washington, D. C.:

In reference to your file No. 55131/84 in the case of the alien Niels Peter Clausen who has been ordered deported at the expiration of his sentence I would respectfully request to be informed if the Bureau has been able to secure [fol. 47] an extension of his certificate of nationality as requested in my letter of Jan'y 30, 1925.

This alien's sentence expires early in December, 1925.

S. H. Howes, District Director of Immigration.

SHH/RAH

Rubber stamps (2): Recd. Bu. of Immigration Oct 27 1925. Mail and Files. Mail & Files Oct. (illegible) Out

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55131/84

February 17, 1925.

District Director of Immigration,
Portland, Maine:

Referring to your letter of January 30th, No. 2525/30, relative to Niels Peter Clausen, you are advised that the Second Assistant Secretary has granted authority under which this alien may reship foreign in lieu of deportation, if such action is practicable.

G. E. Tolman, Acting Commissioner General.

HMC
JWB.

Rubber stamp: G. E. Tolman (illegible) 27 1925 Mail and Files

(Letterhead of U. S. Department of Labor.)

98953/841

Office of Commissioner of Immigration, Ellis Island, New York, Harbor, N. Y.

Nov. 13, 1925.

Commissioner General of Immigration,
Washington, D. C.:

Certificate of Nationality forwarded with Bureau letter No. 55131/84 of the 29th ultimo is valid for deportation. The Portland, Maine, office is being advised that the alien Niels Peter Clausen may, therefore, be delivered at Ellis Island at any time after the expiration of his sentence.

For the Commissioner: W. W. Brown, Inspector in Charge, Law Division.

JK

Rubber stamps (4): Recd. Bu. of Immigration Nov. 14 1925. Mail and Files. Mail & Files Nov 24 1925 Out. Transp & (Illegible) Nov. 18, 1925. Filed Nov. 14, 1925.

[fol. 48] (Letterhead of U. S. Department of Labor.)

[fol. 49] U. S. Department of Labor, Immigration Service, District No. 2

Address all Correspondence to District Director of Immigration and refer to No. 2525/30.

Office of District Director of Immigration, Portland, Me.

Dec. 30, 1925.

Commissioner General of Immigration,
Washington, D. C.

I return herewith original warrant of arrest No. 55131/84 in the case of the alien Niels P. Clausen, who was delivered by this office at Ellis Island yesterday for deportation.

S. H. Howes, District Director.

Rubber stamps (2): Mail & Files Jan. 2 26 Out. Received Jan 1 1926 Deportation Division

[fol. 50] 55131/84

January 5, 1926.

Commissioner of Immigration,
Ellis Island, N. Y. H.:

In accordance with the request contained in your radiogram received the 2nd instant, the Bureau transmits herewith its file in the case of Niels Peterson Clausen alias Niels P. Clausen or Niels Peter Clausen, your file No. 98953/841, the same having been certified under the seal of the Department.

When the enclosed record has served its purpose, will you kindly return it to the Bureau?

G. E. Tolman, Assistant Commissioner-General.

REW
Incl. 38891. 55131/84. Incl. 38891.

January 5, 26.

—— —— file constituting the record of the Bureau of Immigration, Washington, D. C., in the case of Niels Peterson Clausen alias Niels P. Clausen or Niels Peter Clausen.

G. E. Tolman, Assistant Commissioner-General of Immigration. —— ——, Assistant Commissioner-General of Immigration. January 5th, twenty-six. Second Assistant.

REW

[fol. 51] Department of Labor
55131/84
Incl. 38891

Washington, January 5, 1926.

I hereby certify that the annexed is the original file constituting the record of the Bureau of Immigration, Washington, D. C., in the case of Niels Peterson Clausen alias Niels P. Clausen or Niels Peter Clausen.

G. E. Tolman, Assistant Commissioner-General of Immigration.

Office of the Secretary

I hereby certify that G. E. Tolman, who signed the foregoing certificate, is now, and was at the time of signing,

Assistant Commissioner-General of Immigration, and that full faith and credit should be given his certification as such.

In witness whereof, I have hereunto subscribed my name, and caused the seal of the Department of Labor to be affixed this 5th day of January, one thousand nine hundred and twenty-six.

(Signature Illegible), Second Assistant Secretary of Labor. (Seal.)

[fol. 52] IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION DISMISSING FORMER WRIT

I think the Statute of Limitations runs from the date of the last entry, U. S. vs. Uhl, 211 Fed., 628. It follows that the writ must be dismissed and relator remanded to custody of immigration authorities.

Dated, January 27, 1926.

F. A. W., U. S. D. J.

[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DISMISSING FORMER WRIT—Feb. 1, 1926

The petition and writ of habeas corpus for the release of the above named relator having come on to be heard before this Court on January 20th, 1926, and the respondent having filed a return to said petition and writ, and after hearing Silas B. Axtell, Esq., attorney for the relator, in support thereof, and Charles Lincoln Sylvester, Assistant United States Attorney, in opposition thereto, it is

Ordered that the said writ of habeas corpus be and the same hereby is dismissed, and the relator be and he hereby is remanded to the custody of the Commissioner of Immigration at the Port of New York.

F. A. Winslow, U. S. D. J.

[fol. 54] CITATION ON FORMER WRIT

By the Honorable Henry W. Goddard, one of the United States District Judges for the Southern District of New York, in the Second Circuit, to Henry C. Curran, Commissioner of Immigration, Greeting:

You are hereby cited and admonished to be and appear before a United States Circuit Court of Appeals for the Second Circuit, to be holden at the Borough of Manhattan, in the City of New York, in the district and circuit above named, on the 8th day of March, 1926, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Southern District of New York wherein United States of America, ex rel. Niels Peter Claussen, relator, is appellant, and you are respondent, to show cause, if any there be, why the order in said petition for appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 9th day of February, in the year of our Lord one thousand nine hundred and twenty-six, and of the independence of the United States the one hundred and fiftieth.

Henry W. Goddard, United States District Judge for the Southern District of New York, in the Second Circuit.

[fol. 55] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION AND ORDER ALLOWING APPEAL ON FORMER WRIT

To the Honorable Judges of the United States District Court for the Southern District of New York:

The above named petitioner, Niels Peter Claussen, feeling aggrieved by the order made and entered the 1st day of February, 1926, dismissing the writ of habeas corpus heretofore filed herein and remanding the relator to the custody of the Commissioner of Immigration at the Port

of New York, does hereby appeal from said order to the United States Circuit Court of Appeals for the Second Circuit, for the reasons specified in the assignment of errors filed herewith; and he prays that his appeal be allowed and citation be issued as provided by law, and that a transcript of the record and proceedings and documents [fol. 56] upon which the said order was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Second Circuit; and he further prays that a stay of deportation be granted pending the hearing and final determination of such appeal.

Dated, New York, February 8th, 1926.

Silas B. Axtell, Attorney for Relator, Office & P. O. Address, 11 Moore Street, New York City.

The foregoing appeal to the United States Circuit Court of Appeals for the Second Circuit, is allowed.

Dated, New York, February 9, 1926.

Henry W. Goddard, U. S. D. J.

[fol. 57] In United States District Court

[Title omitted]

Assignment of Errors on Former Writ

The petitioner, Niels Peter Claussen, for his assignment of errors herein respectfully alleges:

First. The Court erred in dismissing the writ of habeas corpus herein and the petitioner therefor and in remanding the relator to the custody of the Commissioner of Immigration.

Second. That the Court erred in holding that the relator was in a deportable class under Section 19 of the Immigration Act of February 5, 1917.

Third. That the Court erred in holding that the relator was in a deportable class of persons, and was a deportable person under the laws of the United States.

Fourth. That the Court erred in holding that the relator had been sentenced to imprisonment for one year or more because of conviction in this country for a crime involving [fol. 58] moral turpitude committed within five years after entry of the alien to the United States.

Fifth. That the Court erred in holding that the relator made entry to the United States on March 25, 1918, within the meaning of the immigration laws.

Sixth. That the Court erred in refusing to hold that the only entry to the United States which the relator had made, within the meaning of the immigration laws, was the entry which the relator made on or about January 22, 1912; and that thereafter the relator never departed from the jurisdiction of the United States within the meaning of the immigration laws and did not depart from the jurisdiction of the United States within the meaning of the immigration laws when he shipped as a seaman on the S. S. "Elisha Atkins," on or about October 19, 1917, at New York; and had not departed from the jurisdiction of the United States, within the meaning of such laws when he arrived back upon the said S. S. "Elisha Atkins" on March 25, 1918; and that on or about June 17, 1921, when the relator was convicted of the crime of manslaughter and sentenced to a term of imprisonment of not less than four years and six months and not more than six years, and when the said crime was committed, he had been continually within the jurisdiction of the United States, by reason of residence within the United States or service as a member of a crew of an American steamship, sailing from [fol. 59] American ports to foreign waters without discharge; and that when the said crime was committed and when the relator was convicted, as aforesaid, more than five years had expired since the relator's entry into the United States; and that accordingly, the relator was not within a deportable class under Section 19 of the Immigration Act of February 5, 1917, or under any provision of the Immigration laws of the United States; and that the writ of habeas corpus should be sustained and the relator discharged.

Seventh. That the Court erred in refusing to sustain the writ of habeas corpus and refusing to order that the relator be discharged.

Eighth. The Court erred in refusing to sustain the writ of habeas corpus and refusing to order that the relator be discharged.

Ninth. That the Court erred in diverse other respects appearing in the record.

And the petitioner prays that the order aforesaid may be reversed, and an order granted sustaining the writ of habeas corpus herein and discharging the relator.

Silas B. Axtell, Attorney for Petitioner, Office & P. O. Address, 11 Moore Street, New York City.

[fol. 60] In United States District Court

[Title omitted]

Order Fixing Bail on Former Writ

An application having been made to me for an order releasing the petitioner, Niels Peter Clausen, on bail pending the hearing and determination of the appeal heretofore taken by petition to the Circuit Court of Appeals for the Second Circuit from the order heretofore entered herein, dismissing the petitioner's writ of habeas corpus, and fixing the amount of bail; and the same having come on to be heard before me on the 23rd day of February, [fol. 61] 1926, and Charles A. Ellis having appeared in support of said application, and Charles L. Sylvester, Assistant United States Attorney, having appeared for the respondent, and having made no opposition thereto;

Now, therefore, on motion of Silas B. Axtell, attorney for the petitioner, it is

Ordered that bail of the petitioner be and the same hereby is fixed at $1,000 and, it is further

Ordered that the petitioner, Niels Peter Clausen be released from custody of the United States Commisioner of Immigration at the Port of New York on deposit of cash or bond duly approved by me for $1,000 bail, pending the hearing and determination of said appeal by the United States Circuit Court of Appeals.

Francis A. Winslow, U. S. D. J.

The foregoing order is hereby consented to.
Emory R. Buckner, Attorney for Respondent.

[fol. 62] In United States District Court

[Title omitted]

Stipulation as to Record on Former Writ

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of said District Court in the above entitled matter as agreed on by the parties.

Dated, May 13, 1926.

Silas B. Axtell, Attorney for Relator-Appellant, Office & P. O. Address, 11 Moore Street, New York City. Emory R. Buckner, U. S. Attorney, Attorney for Respondent-Appellee, New York City.

[fol. 63] In United States District Court

[Title omitted]

Clerk's Certification on Former Writ

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 19th day of May, in the year of our Lord one thousand nine hundred and twenty-six, and of the Independence of the United States, one hundred and fifty.

Alex. Gilchrist, Jr., Clerk. (Seal).

[fol. 64] In United States Circuit Court of Appeals, for the Second Circuit

United States of America ex rel. Niels Peter Claussen, Plaintiff-in-Error (Plaintiff below),

vs.

Hon. Henry C. Curran, Commissioner of Immigration, Defendant-in-Error, (Defendant below)

Before—Hough, Hand and Mack, Circuit Judges.

Emory R. Buckner, U. S. Attorney, attorney for appelle, Charles L. Sylvester, of counsel.

Silas B. Axtell, attorney for appellant, Charles A. Ellis, of counsel.

Opinion of Circuit Judge Mack

Mack, C. J.:

The question before us is the meaning of the word "entry" in section 19, of the Immigration Act of February 5, 1917, which provides that

"any alien who is sentenced to imprisonment for a term of one year or more because of conviction of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States,—shall, upon [fol. 65] the warrant of the Secretary of Labor, be taken into custody and deported."

If relator's entry was an asserted by the government in 1918, he was deportable; if in 1912, he was not deportable.

The facts are undisputed. Claussen, a Danish subject, first entered this country in 1912 as a member of a crew of a British ship. He landed at Norfolk, Va. The next day he shipped on an American schooner, and except for short periods on shore, he sailed on American vessels up to the time of his conviction in June, 1921, for manslaughter committed May, 1921. He took out his first papers for naturalization in June, 1919. His last foreign cruise was as a member of the crew of an American schooner; he signed on for this in New York in October, 1917, and arrived back

and signed off in Boston in March, 1918. During the voyage the schooner had landed at several foreign ports. Thereafter he made a few cruises in coastwise trade, and resided for a time on land in the United States.

The exact question is whether his return on the American schooner from the foreign cruise for which he had shipped from the United States is to be deemed an entry into the United States, within the above quoted section 19 of the Act.

The common statement which was the basis for the decisions in the Chinese Laborer, 13 Fed., 291, and Chinese Cabin Waiter, 13 Fed., 286, that an American vessel is to be deemed American soil, is but a fiction and is not of universal application (Sharrenberg vs. Dollar S. S. Co., 245 U. S., 122, Cunard S. S. Co. vs. Mellon, 262 U. S., 100). [fol. 66] Clearly he was not in the United States during the voyage; equally clearly he entered the United States in March, 1918.

The question before us is neither, as in Weedin vs. Baso Okada, 2 Fed., 2nd, 321, C. C. A., 9, whether within other sections of the Act that entry was legal or illegal, nor as in petition of Herevik, 1 Fed., 2nd, 449 (D. C., S. D., Cal.), whether by making such a voyage he lost any rights given under other sections of the Act to return to the United States. See too ex parte Nagata, 11 Fed., 2nd, 178 (D. C., S. D., Cal.).

We are concerned only with the meaning of the word in connection with the deportation provision for the commission of crime, and under that section in our judgment the word should be given the broadest interpretation.

The Weedin case contrasting R. S. 5363 and Section 8 of the Immigration Act, presented a real difficulty to the Court that had to determine the legality of illegality of entry; under the former provision the master of a vessel is criminally liable for refusing to bring his seaman, whom he has carried out, home again, whereas under the latter provision, the master who brings an alien not lawfully entitled to enter or to reside within the country is likewise criminally liable.

In the present case we are not, however, concerned with reconcilement of these two provisions, for even if relator

was lawfully entitled, as held in the Weedin case, to enter the United States in 1918, his action in coming into the country was nonetheless an entry because it was a lawful [fol. 67] entry, and it would be nonetheless if he had established a definite residence within the country. Logically it follows that one who crosses the international bridge at Niagara Falls to Canada and after reviewing the Falls from the Canadian side, returns to this country, does enter the country, and if he be an alien and thereafter within five years is convicted of a crime involving moral turpitude, he would be deportable under the section here involved.

The fact that the relator took out naturalization papers in 1919 and therefore under the naturalization laws would "for all purposes of protection as an American citizen be deemed such" does not aid him here. No question of protection as an American citizen is involved. The view that because an alien seaman on an American vessel is regarded as an American seaman in the sense that he is under the protection and subject to the laws of the United States in re Ross, 140 U. S., 453, was held in U. S. vs. New York S. S. Co., 269 U. S., 304, to have no application to the question whether such seamen come within the terms of a special statute dealing specifically with "alien seamen as such." It was there held that for the purpose of the act then under consideration alien seamen meant seamen who are aliens and not seamen on foreign vessels.

The order must be affirmed.

[fol. 68] In United States Circuit Court of Appeals

[Title omitted]

Dissenting Opinion of Circuit Judge Hand

Hand, Circuit Judge (dissenting): It seems to me that there is a strong reason to distinguish the return of a seaman at the end of a voyage for which he has signed the articles and on the same ship on which he left, from a reentry one has not bound oneself to make when one went away. A seaman is bound for the voyage once he signs on; desertion is at least a civil wrong. To say that every

coasting vessel or fishing smack which passes the league limit subjects all aliens on board to all conditions of admission into the United States, including, I should suppose, the Quota Law, seems to me an impracticable interpretation of the law, yet I can see no escape from it if my brothers are right. It seems that American crews must be made up of citizens and citizens only. That I should have thought was the opposite of the plain intention of Congress as respects our mercantile marine.

[fol. 69] Nor can I see that we can escape considering the conflicts which our ruling raises with other statutes because they are not before us here. I can see no answer to the dilemma put by Rudkin, J., in Weedin vs. Banzo Okada, 2 Fed. (2nd), 321 (C. C. A., 9), and that case is flat for the relator at bar. I agree that Chinese Cabin Waiter, 13 Fed. Rep., 286, and Chinese Laborers on Shipboard, 13 Fed. Rep., 291, arose under other statutes, but for all that if there is any principle in the matter at all they too are in point. While I set no store upon the doctrine of an American ship as American soil, I do think that we should not apply this statute literally, but rather with an eye to the purposes for which it was intended.

I vote to reverse.

[fol. 70] In United States Circuit Court of Appeals

[Title omitted]

Mandate—Dec. 13, 1926

Error to the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

[fol. 71] On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

It is further ordered that a mandate issue to the said District Court in accordance with this decree.

C. M. H., J. W. M.

In United States Circuit Court of Appeals

Clerk's Certificate

United States of America,
Southern District of New York, ss.

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 60, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of United States ex rel. Niels Peter Claussen, Plaintiff-in-Error, against Henry H. Curran, as Commissioner, etc., Defendant-in-error, as the same remains of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 28th day of December, in the year of our Lord one [fol. 72] thousand nine hundred and twenty-six and of the Independence of the said United States the one hundred and fifty-first.

Wm. Parkin, Clerk. (Seal)

Decision of U. S. Supreme Court Abating Appeal

No. 166. The United States of America ex rel. Niels Peter Claussen, Petitioner, vs. Honorable Henry H. Curran, Commissioner of Immigration. On writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit. Per curiam: In this case the order of the District Court dismissing the writ of habeas corpus was entered on February 1, 1926; an appeal was allowed on February 9, 1926, to the Circuit Court of Appeals for the Second Circuit, which court, on December 14, 1926, entered a judgment affirming that of the District Court. A writ of certiorari was granted by this court on March 7, 1927.

It appearing that Henry H. Curran, sued herein as Commissioner of Immigration, resigned such office on March 31st, 1926, and was succeeded by Benjamin M. Day, who now holds that office and that no motion was made under

Section 11 of the Act of February 13, 1925 (c. 229, 43 Stat., 936, 941), asking the Court to "permit the cause to be continued and maintained by or against the successor in office of such officer," and that the six months' period, within which such a motion could have been made, has expired, the Court now vacates the judgments entered in the District Court and in the Circuit Court of Appeals and remands the cause to the District Court with a direction to dismiss the cause as abated.

[fol. 73] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ABATING CASE

This cause having heretofore come on for hearing in this Court and an order having been entered in the Office of the Clerk of this Court dismissing the writ of habeas corpus obtained by the relator and remanding him to the custody of the United States Commissioner of Immigration, at the Port of New York, and the relator having thereafter obtained a transcript of the record to be brought into the United States Court of Appeals for the Second Circuit and the said Circuit Court of Appeals having transmitted to this Court its mandate by which it appears that at the October, 1926, Term of the said Court, on consideration of the said transcript of record and argument by counsel, the said Circuit Court of Appeals for the Second Circuit adjudged and decreed that the order of the said District Court be affirmed;

Whereupon, by writ of certiorari, the relator herein obtained a transcript of the record to be brought into the [fol. 74] Supreme Court of the United States and the said Supreme Court of the United States having transmitted to this Court its mandate by which it appears that at the October Term, 1927, thereof, this cause came on to be heard on the said transcript of record and on motion to abate which was argued by counsel, on consideration whereof it was ordered and adjudged by the said Supreme Court of the United States that the judgments of the said Circuit Court of Appeals and of the District Court of the United

States for the Southern District of New York in this cause be and the same are hereby vacated with further direction to dismiss the cause as abated.

Now, on motion of Charles H. Tuttle, United States Attorney for the Southern District of New York, attorney for the respondent herein, it is

Ordered, adjudged and decreed that the mandate of the said Supreme Court of the United States in this cause be and the same hereby is made the judgment of this Court and said cause is dismissed; and it is further

Ordered, adjudged and decreed that the relator herein, Niels Peter Claussen, surrender himself to the Commissioner of Immigration at the Port of New York on or before the 30th day of April, 1928, to be dealt with in conformity with law, and upon default thereof the bond given for the release of the alien will be declared forfeited.

Dated, New York, N. Y., March 19, 1928.

T. D. Thatcher, United States District Judge.

[fol. 75] In United States District Court, Southern District of New York

M 12-40

United States ex rel. Niels Peter Claussen, Realtor,

vs.

Benjamin M. Day, Commissioner of Immigration at the Port of New York, Respondent

Return to Writ of Habeas Corpus

Southern District of New York, ss:

Joseph Savorett, being duly sworn, says that he is and during all the times herein mentioned has been a clerk in the service of the United States; that he is attached to the Law Department of the Immigration Service of the United States at Ellis Island, New York; that he in his official capacity is authorized to make and in behalf of the respondent hereby makes the following return to the writ of habeas corpus herein.

In compliance with the direction of this Court, the body of the said alien in his own proper person was produced herewith before this Court at the time specified in the writ.

It is respectfully urged that upon its face the petition upon which the writ was granted is insufficient in law, and that the writ should therefore be squashed because

[fol. 76] (a) The petition does not allege facts to show that the proceedings of the Department of Labor upon which was issued the warrant of deportation pursuant to which the said alien held, were not regular, fair and in compliance with the statute applicable in such cases, nor facts from which this Court can determine that the proceedings were either irregular, unfair or not in compliance with said statute;

(b) The petition does not allege any facts which entitled this Court to review the findings and conclusion of the Department of Labor upon which the warrant of deportation was issued;

(c) It is not alleged that there was no evidence before the Department of Labor upon which it based or could have based its finding and conclusion in accordance with which the warrant of deportation was issued;

(d) It does not appear by allegation of facts that the issues sought by the petition now to be litigated in this Court have not already been determined by the Department of Labor adversely to the said alien in proceedings which were regular, fair and in compliance with the statute applicable thereto.

As appears by the records of the Department of Labor of the United States with respect to the above named alien, copies of which are produced and filed herewith as part of this return;

1. The printed record attached to the original petition contains all of the facts in this matter. We hereby respectfully refer to said record and make it a part hereof as [fol. 77] if it were hereto attached. On the basis of the same, this writ of habeas corpus should be dismissed.

2. As appears from the record the alien was duly informed and apprised of the charges against him. He was

afforded a full, complete and fair hearing by the Department of Labor upon the said charges and was afforded a full, complete and fair opportunity to answer and submit evidence upon such charges. There was evidence before the Department of Labor sufficient to sustain the said charges. The Department of Labor duly found that the charges were sustained, that they were in fact fully sustained by the proofs that were before and were considered by the Department of Labor. In any event, it cannot be said on the record herein the Department of Labor abused the discretion vested in it by Congress and its determination was final and conclusive.

3. Deponent denies any knowledge or information sufficient to form a belief as to the truth of the allegations of the relator's petition, except as to the allegations heretofore expressly admitted.

Wherefore, deponent prays that the writ of habeas corpus herein be dismissed and the said alien be remanded to the custody of the Commissioner of Immigration at Ellis Island, New York.

Joseph Savorett.

Sworn to before me this 3d day of May, 1928.
Armand Chankalian, Notary Public.

N. Y. County Clerk's No. 307, Reg. No. 9163.
Commission expires March 30, 1929.

[fol. 78] In United States District Court

[Title omitted]

Order Dismissing Writ of Habeas Corpus—May 4, 1928

The writ of habeas corpus, the petition and all the papers annexed thereto, for the release of the above named relator having come on to be heard before this Court on May 4th, 1928, and the respondent having filed a return to said petition and writ, and after hearing Silas B. Axtell, Esq., attorney for the relator, in support thereof, and Edward

Feldman, Assistant United States Attorney, in opposition thereto, it is

Ordered, that the said writ of habeas corpus be and the same hereby is dismissed, and the relator be and he hereby is remanded to the custody of the Commissioner of Immigration, at the Port of New York.

T. D. Thatcher, U. S. D. J.

[fol. 79] In United States District Court

[Title omitted]

Assignment of Errors

The petitioner, Niels Peter Claussen, for his assignment of errors herein respectfully alleges:

First. The Court erred in dismissing the writ of habeas corpus herein and the petition therefor and in remanding the relator to the custody of the Commissioner of Immigration.

Second. That the Court erred in holding that the relator was in a deportable class under Section 19 of the Immigration Act of February 5, 1917.

Third. That the Court erred in holding that the relator was in a deportable class of persons, and was a deportable person under the laws of the United States.

Fourth. That the Court erred in holding that the relator had been sentenced to imprisonment for one year or more because of conviction in this country for a crime involving [fol. 80] moral turpitude committed within five years after entry of the alien to the United States.

Fifth. That the Court erred in holding that the relator made entry to the United States on March 25, 1918, within the meaning of the immigration laws.

Sixth. That the Court erred in refusing to hold that the only entry to the United States which the relator had made, within the meaning of the immigration laws, was the entry

which the relator made on or about January 22, 1912; and that thereafter the relator never departed from the jurisdiction of the United States within the meaning of the immigration laws and did not depart from the jurisdiction of the United States within the meaning of the immigration laws when he shipped as a seaman on the S. S. "Elisha Atkins," on or about October 19, 1917, at New York; and had not departed from the jurisdiction of the United States within the meaning of such laws when he arrived back upon the said S. S. "Elisha Atkins" on March 25, 1918; and that on or about June 17, 1921, when the relator was convicted of the crime of manslaughter and sentenced to a term of imprisonment of not less than four years and six months and not more than six years, and when the said crime was committed, he had been continually within the jurisdiction of the United States, by reason of residence within the United States or service as a member of a crew of an American steamship, sailing from American ports to foreign waters and return without discharge; and that [fol. 81] when the said crime was committed and when the relator was convicted, as aforesaid, more than five years had expired since the relator's entry into the United States; and that accordingly, the relator was not within a deportable class under Section 19 of the Immigration Act of February 5, 1917, or under any provision of the immigration laws of the United States; and that the writ of habeas corpus should be sustained and the relator discharged.

Seventh. That the Court erred in refusing to sustain the writ of habeas corpus and refusing to order that the relator be discharged.

Eighth. That the Court erred in refusing to sustain the writ of habeas corpus refusing to order that the relator be discharged.

Ninth. That the Court erred in diverse other respects appearing in the record.

Tenth. That the Court erred in holding that the decision rendered on the previous application for a writ of habeas corpus, by the United States District Court for the Southern District of New York and the United States Circuit Court of Appeals for the Second Circuit, was binding and governed this application.

Eleventh. That the Court erred in refusing to hold that the order of the United States Supreme Court and the judgment entered thereon, was effective to vacate and render null and void the orders and judgment of the United States District Court for the Southern District of New York and the United States Circuit Court of Appeals for [fol. 82] the Second Circuit rendered upon the previous application leaving the question within the jurisdiction of the District Court and in dismissing the writ of habeas corpus.

And the petitioner prays that the order aforesaid may be reversed, and an order granted sustaining the writ of habeas corpus herein and discharging the relator.

Silas B. Axtell, Attorney for Petitioner, Office & P. O. Address, 11 Moore Street, New York City.

[fol. 83] In United States District Court

[Title omitted]

To the Honorable Judges of the United States District Court for the Southern District of New York:

The above-mentioned petitioner, Niels Peter Claussen, feeling aggrieved by the order made and entered the 4th day of May, 1928, dismissing the writ of habeas corpus heretofore filed herein and remanding the relator to the custody of the Commissioner of Immigration at the Port of New York, does hereby appeal from said order to the United States Circuit Court of Appeals for the Second Circuit, for the reasons specified in the assignment of errors filed herewith; and he prays that his appeal be allowed and citation be issued as provided by law, and that a transcript of the record and proceedings and documents upon which the said order was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Sec- [fol. 84] ond Circuit; and he further prays that a stay of deportation be granted pending the hearing and final determination of such appeal.

Dated, New York, May 4th, 1928.

Silas B. Axtell, Attorney for Relator, Office & P. O. Address, 11 Moore Street, New York City.

The foregoing appeal to the United States Circuit Court of Appeals for the Second Circuit, is allowed.

Dated, New York, May 4, 1928.

T. D. Thatcher, U. S. D. J.

[fol. 85] Citation in usual form omitted in printing.

[fol. 86] In United States District Court

[Title omitted]

Notice of Appeal

Please take notice, that the relator and petitioner, Niels Peter Claussen, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit, from the final order of this Court entered herein in the office of the Clerk of the Southern District of New York on or about May 5th, 1928, dismissing the writ of habeas corpus herein and said relator and petitioner hereby appeals from each and every part of said order as well as from the whole thereof.

Dated, New York, May 5th, 1928.

Yours, etc.,
Silas B. Axtell, Attorney for Relator, Office & P. O. Address, 11 Moore Street, New York City.

To Charles H. Tuttle, U. S. Attorney. Edgar G. Wandless, of Counsel, Attorneys for Respondent, 45 Broadway, New York City.

[fol. 87] In United States District Court

[Title omitted]

Order Fixing Bail—May 4, 1928

An application having been made to me for an order releasing the petitioner, Niels Peter Claussen, bail pending the hearing and determination of the appeal heretofore taken by the petitioner to the Circuit Court of Appeals for the Second Circuit from the order heretofore entered herein dismissing the petitioner's writ of habeas corpus and fixing the amount of bail, and the same having come on to be heard

before me, and upon reading and filing the annexed affidavit of Silas B. Axtell, duly sworn to the 30th day of April, [fol. 88] 1928, and the annexed consent of the respective parties and the surety company, and Silas B. Axtell, having appeared in support of said application and Edward Feldman, Assistant United States Attorney having appeared for the respondent, and having made no opposition thereto, it is

Now, on motion of Silas B. Axtell, attorney for petitioner,

Ordered that the bail of the petitioner be and the same hereby is fixed at $1,000 and bond number 9831 which has been duly filed by the Independence Indemnity Company may be amended and substituted in this proceeding, and the said bond shall stand with full force and effect, and it is further

Ordered that the petitioner, Niels Peter Claussen, be released from the custody of the United States Commissioner of Immigration of the Port of New York, pending the hearing and determination of said appeal by the United States Circuit Court of Appeals.

T. D. Thatcher, U. S. D. J.

We hereby stipulate, consent and agree to the entry of the foregoing order.

Charles H. Tuttle, Attorney for Respondent. Independence Indemnity Co., Surety, By J. A. Aschutti, Attorney-in-fact.

[fol. 89] In United States District Court

[Title omitted]

Stipulation as to Record

It is hereby stipulated and agreed that the foregoing is a true transcript of said District Court in the above entitled matter as agreed on by the parties.

Dated, May 17, 1928.

Silas B. Axtell, Attorney for Relator-Appellant, Office & P. O. Address, 11 Moore Street, New York City. Charles H Tuttle, Attorney for Respondent-Appellee, New York City.

[fol. 90] Clerk's certificate to foregoing transcript omitted in printing.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

M 12—40

UNITED STATES ex Rel. NIELS PETER CLAUSSEN, Relator,

vs.

BENJAMIN M. DAY, Commissioner of Immigration at the Port of New York, Respondent

SIRS: Please take notice that upon the annexed affidavit of Lucien V. Axtell, duly sworn to the 29th day of May, 1928, and upon all the facts and proceedings heretofore had herein; a motion will be made at a Term of this Court to be held at the United States Court House and Post Office Building, in the Borough of Manhattan, City and State of New York on the 4th day of June, 1928, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel may be heard for an order permitting this cause to be added to the General Calendar so that it may be argued before the close of the October 1927 Term, and that such other and further relief as to the Court may seem just and proper.

Dated New York, May 29th, 1928.

Yours, etc., Silas B. Axtell, Attorney for Relator. Office & P. O. address: 11 Moore Street, New York City.

To Charles H. Tuttle, U. S. Atty., Attorney for Respondent, Post Office Building, New York City.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES ex Rel. NIELS PETER CLAUSSEN, Relator,

vs.

BENJAMIN M. DAY, Commissioner of Immigration at the Port of New York, Respondent

STATE OF NEW YORK,
City and County of New York, ss:

Lucien V. Axtell, being duly sworn deposes and says; that he is an attorney at law in the office of Silas B. Axtell,

the attorney for the relator in the above entitled action, and is familiar with all the facts and proceedings hereinbefore had herein.

Your deponent makes this affidavit to support a prayer for leave to have this case added to the calendar for the October, 1927 Term. This is an appeal by the relator on a writ of habeas corpus from an order of the United States District Court for the Southern District of New York, dismissing the petitioner's writ of habeas corpus.

The petition in support of the writ, alleges among other things that the writ of habeas corpus was allowed by the Honorable John C. Knox on December 31st, 1925, and was dismissed by Honorable Francis A. Winslow on January 27th, 1926. That the petitioner thereupon took an appeal to the Court and was argued before Honorable Hough, Hand and Mack, Circuit Judges, and on or about December 13th, 1926, the Court rendered a decision, by a divided court, voting two to one, affirming the said order of the District Court. A majority opinion was written by the Honorable Julian W. Mack, United States Circuit Judge, and a dissenting opinion was written by the Honorable Leonard Hand.

The petition further alleges that on March 7th, 1927, a writ of certiorari was granted by the Supreme Court of the United States to review the case. At the time when the original petition for writ of habeas corpus was filed and the writ first allowed by the District Court as aforesaid, the writ was directed to Honorable Henry H. Curran, the then Commissioner of Immigration.

On January 9th, 1928, a suggestion of abatement was filed by the Supreme Court, by the United States Solicitor General, wherein it was pointed out that the relator had failed to make a motion to substitute Benjamin M. Day, as respondent, who had succeeded Henry H. Curran on March 31st, 1926, within the six months required by Statute, in order that the cause could be continued. The Supreme Court thereupon vacated the judgments entered in the District Court and the Circuit Court of Appeals and remanded the cause to the District Court with the direction to dismiss it as abated. Pursuant to such direction, an order was accordingly entered, dismissing the cause as abated on March 19th, 1928.

Thereafter, on April 30th, 1928, the relator was again taken into custody by the order of the Commissioner, Benjamin M. Day, and on May 1st, 1928, a second writ of habeas corpus was granted and dismissed on May 4th, but the relator was released pending the appeal, upon the filing of a bond in the sum of $1,000.00. On May 5th, an appeal was taken and the record on appeal filed on May 17th, 1928. The same questions are raised herein, as were brought before the Court on the first hearing on December 13th, 1926, except that the succeeding events had been added to it.

Your deponent being of the opinion that this Court will follow its previous decision, and being desirous of again petitioning the Supreme Court, asks that this appeal be added to the General Calendar for immediate disposition.

Your deponent has also learned that the case of Rios v. Commissioner Benjamin M. Day, is now pending before the Supreme Court of the United States, upon a petition for a writ of certiorari, upon a decision of this Court of March 8th, 1928, which involves similar issues. Your deponent is desirous of having this appeal argued and determined with that case in the Supreme Court of the United States.

Wherefore, your deponent respectfully prays that the Court will permit this cause to be added to the General Calendar so that it may be argued before the close of this Term, and that such other and further relief as to this Honorable Court may seem just and proper, be granted.

Lucien V. Axtell.

Sworn to before me this 29 day of May, 1928. Edith McCormick, Notary Public. (Seal.)

[Endorsed:] United States Circuit Court of Appeals for the Second Circuit. United States ex Rel. Niels Peter Clausen, Relator, against Benjamin M. Day, Commissioner of Immigration at the Port of New York, Respondent. Affidavit. Silas B. Axtell, Attorney for Relator, 11 Moore Street, New York City. A copy of the within order has been this day received at this office, May 29, 1928. Charles H. Tuttle, U. S. Attorney.

United States Circuit Court of Appeals for the Second Circuit

United States ex Rel. Niels Peter Claussen, Relator-Appellant,

vs.

Benjamin M. Day, Commissioner of Immigration at the Port of New York, Respondent-Appellee

Sirs: Please take notice that the relator-appellant, United States ex Rel. Niels Peter Claussen, hereby consents that the appeal herein be affirmed by the Court pro forma i. e., without argument, and without the filing of briefs, and

Please take notice that this notice is supplement to the motion submitted to the Court on the 4th day of June, 1928.

Dated New York, June 4th, 1928.

Yours, etc., Silas B. Axtell, Attorney for Relator-Appellant. Office & P. O. address: 11 Moore Street, New York City.

To Charles H. Tuttle, U. S. Atty., Attorney for Respondent-Appellee, Post Office Building, New York City.

United States Circuit Court of Appeals, Second Circuit

At a stated term of the United States Circuit Court of Appeals in and for the Second Circuit, held at the court-rooms, in the Post Office building, in the city of New York, on the 12th day of June, one thousand nine hundred and twenty-eight.

Present: Hon. Martin T. Manton, Hon. Learned Hand, Hon. Thomas W. Swan, Circuit Judges.

United States ex Rel. Niels Peter Claussen, Relator-Appellant,

v.

Benjamin M. Day, as Commissioner, etc., Respondent-Appellee

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be, and it hereby is, affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

M. T. M., L. H.

[Endorsed:] United States Circuit Court of Appeals, Second Circuit. United States ex rel. Niels Peter Claussen v. Benjamin M. Day, as Comm'r. Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed June 12, 1928. William Parkin, Clerk.

United States Circuit Court of Appeals, Southern District of New York

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 96, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of United States ex rel. Niels Peter Claussen, Relator-Appellant, against Benjamin M. Day, as Commissioner, etc., Respondent-Appellee, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 26th day of June, in the year of our Lord one thousand nine hundred and twenty-eight, and of the Independence of the said United States the one hundred and fifty-second.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

[fol. 99] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 22, 1928

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 33,725. U. S. Circuit Court of Appeals, Second Circuit. Term No. 416. The United States of America, ex rel. Niels Peter Claussen, vs. Hon. Benjamin M. Day, Commissioner of Immigration. Petition for writ of certiorari and exhibit thereto. Filed September 6th, 1928. File No. 33,725.